

LAW OFFICES
GOLDBERG, GODLES, WIENER & WRIGHT
1229 NINETEENTH STREET, N.W.
WASHINGTON, D.C. 20036

DOCKET FILE COPY ORIGINAL
DOCKET FILE COPY ORIGINAL

HENRY GOLDBERG
JOSEPH A. GODLES
JONATHAN L. WIENER
HENRIETTA WRIGHT
MARY J. DENT
DANIEL S. GOLDBERG
W. KENNETH FERREE
THOMAS G. GHERARDI, P.C.
COUNSEL

(202) 429-4900
TELECOPIER:
(202) 429-4912

July 1, 1996

EX PARTE

Robert M. Pepper
Chief, Office Of Plans and Policy
Federal Communications Commission
1919 M Street NW, Room 822
Washington, D.C. 20554

RECEIVED
JUL 1 1996
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Re: CS Docket No. 95-184;
(CC Docket No. 96-98) ✓

Dear Dr. Pepper:

This letter follows-up on the discussion that two of my clients, Mike Katzenstein of OpTel, Inc., ("OpTel") and Don Simons of MultiTechnology Services, L.P. ("MTS") had with you on June 27, 1996, regarding the LEC interconnection rules under Section 251 of the Communications Act, as amended, and the establishment of the demarcation point for telephone inside wiring.

For the reasons set forth in the Comments of the Independent Cable & Telecommunications Association (of which both OpTel and MTS are active members) in this proceeding, OpTel and MTS agree with the Commission's tentative conclusion that national standards for network unbundling are required if competition is to be introduced into the local loop. In particular, the Commission should establish a minimum set of network elements that are required to be unbundled, including physical facilities such as the local loop and sub-loops, local switching, local transport and special access, and service network elements such as databases and signaling, voice, and database access.

Competitive telecommunications carriers should have access to the minimum physical facilities that are required to provide competitive services. It has been a favorite anticompetitive tactic of the ILECs to make network elements available to competitors only in increments that are cost-prohibitive. This not only

stifles competition in those instances in which a provider declines interconnection because of the cost, but it leads to asset misallocation in those cases in which a competitive provider proceeds even though it is required to take more of a network element than it needs.

Further, pricing both for physical network elements and service network elements should be based on cost. Naturally, where a service element has been further subdivided (*e.g.*, the loop has been unbundled into sub-loop elements), ILECs should be required to price the sub-elements at cost and not at the cost for the entire un-subdivided element. OpTel and MTS believe that the TSLRIC methodology, which focuses on forward-looking, as opposed to historical, cost considerations is the best, most fair, and most easily defined method for establishing the price of unbundled elements.

National rules mandating the complete unbundling of network elements, including sub-loops, are essential to the development of a truly competitive local exchange market. Such unbundling is not enough, however. Because ILECs continue to control the establishment of the telephone demarcation point, and because the ILECs use their discretion in this regard to fix the demarcation point in the most anticompetitive location possible in each jurisdiction and each MDU, competitive telecommunications carriers will not be able to obtain efficient access to whatever sub-loop elements the Commission ultimately requires to be unbundled in this proceeding.

Consequently, OpTel and MTS urge the Commission to establish a national uniform demarcation point for telephone inside wiring that will ensure that competitive carriers have access to potential customers and that will protect the rights of property owners to control the disposition of their property. Specifically, the Commission should establish a federal rule providing that property owners, both in the MDU context and in the single family home context, have the right to determine the location of the demarcation point on their property. Their discretion to do so should be limited only by minimum standards regarding provider access and network security. Thus, for example, an MDU owner should be permitted to place the telephone demarcation point at the minimum point of entry to the property, at the minimum point of entry to a building on the property, or at any other point that is reasonably accessible to competitive providers. ILECs should be compensated at the fully depreciated cost of any facilities that become CPE as a result of a property owner's election under this rule.

The telephone demarcation point suggested above will have the dual advantages of allowing property owners to decide the point at which they wish alternative providers to access the wiring on their property and of removing control over the demarcation point from the ILECs, which have not been complying with the letter or the spirit of the Commission's Part 68 rules. Absent such a modification in the telephone demarcation point, and federal preemption of current

tariff or PUC-based alternatives, the purpose of network unbundling will be frustrated and competition in the local loop will be inhibited.

Respectfully,

Henry Goldberg /Bc

/s/ Henry Goldberg

cc: Regina Keeney
William F. Caton